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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,507	02/11/2004	David E. Silvergate	SLG 302	5265

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EXAMINER

NGUYEN, KIEN T

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/777,507

Applicant(s)

SILVERGLATE, DAVID E.

Examiner

Kien T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 42 and 43 is/are allowed.
- 6) ☒ Claim(s) 1-3, 9-13, 16, 27-33 and 36-41 is/are rejected.
- 7) ☒ Claim(s) 4-8, 14, 15, 17-26, 34 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 9, 10, 11, 13, 16, 27-33, 36, 37, 39-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Bakker U.S. Patent 4,915,664.

Bakker disclosed a flying toy comprising a body (21) having an elongate channel (31) (Fig. 8) formed therein, the channel extending in a longitudinal direction along the body, an elastic launch member (41) coupled to the body (Fig. 3) and configured to be stretched forward in the longitudinal direction by a digit of a user (applicant's claim 1); the channel is downwardly facing and U-shaped (Fig. 6) (applicant's claims 2 and 3); a nose member (51) coupled to the body (applicant's claim 9), the nose member is at least partially constructed of a resilient material (col. 5, lines 17-19) (applicant's claim 10), the resilient material is constructed of expanded polystyrene which is considered equivalent to foam (claim 11), the nose member (51) is positioned adjacent a front opening of the channel of the body (Fig. 8), the elastic member (41) is configured to transition between a stretched state and a retracted state (applicant's claim 16), one or more fins (71, 73, 75, 77) are positioned adjacent a rear end of the body (claims 27, 28), the fins are configured to be shape-adjustable by a user (col. 5, lines 17-19) (claims 29), the fins are mounted in respective slots on the body (claim 30), the fins are provided in pairs, each pair being formed on a unitary structural element that extends into a

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respective first slot of the body, and out of a respective second slot in the body (see Fig.8) (claims 31, 32), the body including a grip (Fig. 3) (claim 33), Fig. 4 shows the grip as an enlarged region adjacent a trailing end of the body to facilitate grasping by a user (claims 36, 37), Fig. 4 shows the elastic launch member (41) anchored to the body adjacent a trailing portion of the body and configured to be stretched forward in the longitudinal direction by a digit of a user (claim 39), the body includes guides (both sides of member 37) coupled to the body and being configured to guide respective portions of the elastic launch member (claim 40), and an impact absorbing nose member (51) coupled to a leading portion of the body.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bakker in view of Chase U.S. Patent 5,423,706.

It is noted that Bakker failed to teach the use of a whistle on the nose member as set forth therein. However, such whistle on the leading end of a flying toy is very well known in the art as evidenced by whistle (130) on nose (36) (Fig. 7) of flying toy (14). Accordingly, it would have been obvious to one of ordinary skill in the art to modify the nose member of Bakker with the whistle as taught by Chase for the purpose of providing auditory effects to the toy.

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***Allowable Subject Matter***


Claims 4-8, 14, 15, 17-26, 34, 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 42-43 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (571) 272-4428. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kien T. Nguyen  
Primary Examiner  
Art Unit 3714

Ktn